appendix

Supreme Court, U. S.
FILED
SEP 30 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-171

FREDERICK A. SMITH and MARILYN G. SMITH,
Petitioners,

v.

CARLOS L. JARAMILLO, Director, New Mexico
Department of Alcohol Beverage Control.

SUPPLEMENTAL APPENDIX

To Petition for a Writ of Certiorari to the Supreme Court of the State of New Mexico

FREDERICK A. SMITH
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Petitioner, Pro Se

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State of New Mexico
County of Santa Fe

In the District Court
First Judicial District

Frederick A. Smith and Marilyn G. Smith,

Petitioners,

vs.

Carlos L. Jaramillo, Director, Department of Alcoholic Beverage Control,

Respondent.

No. 46603.

DECISION OF THE COURT

The Court, having heard the evidence and testimony, and the arguments of Counsel, and having considered the Requested Findings of Fact and Conclusions of Law, now renders the following decision:

Findings of Fact

1. The Petitioners Frederick A. Smith and Marilyn G. Smith, are husband and wife, and are legal residents of Sierra County, New Mexico.

2. The Respondent, Carlos L. Jaramillo, is the duly appointed, qualified and acting Director of the Department of Alcoholic Beverage Control of the State of New Mexico.

3. On or about May 17, 1973, the Petitioners filed with the Respondent, in his capacity as Director of the Department of

Alcoholic Beverage Control, an application for the issuance of a new dispenser's liquor license to be located within the municipal or corporate limits of the Village of Williamsburg, Sierra County, New Mexico, an incorporated municipality.

4. Petitioners' application for a dispenser's liquor license was approved and endorsed unanimously by the Board of Trustees as the governing body of the Village of Williamsburg, New Mexico.

5. There is not now and there never has been any dispenser, retail or club license situated within the area of the corporate limits of the Village of Williamsburg, New Mexico.

6. The said application of petitioners has complied with all legal requirements concerning the location of a proposed dispensers' liquor license and in particular the proposed location of petitioner's was a greater distance from any church, school or military institution as required by law.

7. All requirements of law with regard to the posting of notices and publication of notices and a public hearing for petitioners' application for a dispensers' liquor license were complied with and satisfied.

8. The population of the Village of Williamsburg, located in Sierra County, New Mexico, as last determined by the United States Bureau of Census, was: 367.

9. The population of the incorporated municipality of Truth or Consequences, New Mexico, as last determined by the United States Bureau of Census, was 4,656.

10. There are at the present time, two existing licensed dispenser's liquor licenses located on premises within a radius of five miles of the corporate limits of Williamsburg, New Mexico, one of which is located at Elephant Butte, in an unincorporated

area of Sierra County, and one of which lies within the municipal limits of the City of Truth or Consequences, New Mexico.

11. The proposed license location of the petitioner's is within the incorporated municipal limits of Williamsburg, New Mexico, and such location is within five miles of the corporate limits of the City of Truth or Consequences, New Mexico.

12. There are numerous incorporated municipalities located in the State of New Mexico having less than 1,000 population and further having either a dispenser or retail license situated within the corporate limits of such municipalities under 1,000 population and having liquor licenses located in such municipalities:

Municipality	**Population**	**Municipality**	**Population**
Hagerman	953	San Jon	308
Dexter	746	Chama	899
Maxwell	393	Cuba	415
Vaughn	867	San Ysidro	182
Roy	476	Pecos	598
Mosquero	244	Red River	201
Tatum	982	Willard	209
Capitan	439	Estancia	721
Corona	262	Moriarty	758
Columbus	241	Encino	250
Wagon Mound	630	Des Moines	204
Cloudcroft	525	Grenville	21
Logan	386	Los Lunas	973
Ruidoso Downs	702		

13. Respondent has waived issue as to venue herein by not asserting such issue in the answer nor arguing the same at trial herein.

14. Petitioners have complied with all requirements imposed under Sec. 46-5-16 N.M.S.A., 1953 Comp. (P.S.), subparagraph C.

15. In force at all times material hereto was the following state statute:

> "46-5-24. Limitation on number of Licenses that can be issued.—The maximum number of licenses to be issued under the provisions of Sections 46-5-2, 46-5-3 and 46-5-11 N.M.S.A., New Mexico Statutes Annotated, 1953 Compilation, shall be as follows:
>
> (a) In incorporated municipalities, not more than one dispenser's or one retailer's or one club license for each two thousand or major fraction thereof population in such municipality. * * *"

16. In force at all times material hereto was the following state statute:

> "46-5-25. Location of Presently Licensed Premises—Population Determination.—For the purposes of this act (Sec. 46-5-24, 46-5-25), all presently licensed locations or premises lying within five (5) miles of the corporate limits of any municipality shall be deemed as lying within the municipality in determining the maximum number of licenses to be issued in said municipality under the provisions hereof and provided further that the population of any incorporated municipality or county shall for the purposes of this act, be deemed to be the population thereof as last determined by the Bureau of Census."

17. The City of Truth or Consequences, New Mexico, presently has a total of thirteen (13) liquor licenses (consisting of dispenser's, retailers or club licenses) within the municipal boundaries of said municipality.

18. The municipal limits of Williamsburg and Truth or Consequences, New Mexico, share a common boundary in part, and citizens of Williamsburg are only a few minutes away from liquor establishments in Truth or Consequences, New Mexico.

Conclusions of Law

1. The petitioners have standing to bring this action in Santa Fe County, New Mexico.

2. The Court has jurisdiction of the parties and the subject matter hereof.

3. The issuance of a new, additional quota dispenser's license to petition is not authorized as a matter of right under Section 46-5-24 (a) and 46-5-25 N.M.S.A., 1953 Comp., or other state statutes made and provided.

4. Petitioners are not entitled as a matter of right to the issuance of a dispenser's liquor license in the incorporated City of Williamsburg under Section 46-5-24 or 46-5-25 N.M.S.A., unless other provisions of the liquor control act are complied with, and the issuance of a license to the petitioners would fail to protect the public health, safety and morals of Williamsburg and Truth or Consequences, New Mexico in violation of Section 46-5-1 N.M.S.A., 1953 Comp.

5. Liquor licenses existing for locations or premises within the municipal limits of Truth or Consequences, New Mexico and in Sierra County, and within a five mile radius of the City of Williamsburg preclude under present population counts the issuance of a new liquor license to plaintiffs.

6. The present population of the City of Williamsburg, as shown by the last decennial census, i.e., 367 persons, is not a "major fraction" of 2,000 as contemplated by Section 46-5-24

N.M.S.A., 1953 Comp., paragraph (a), so as to entitle petitioners to said license.

7. Section 46-5-24 N.M.S.A., 1953 Comp., paragraph (a), and Section 46-5-25 N.M.S.A., 1953 Comp., when read together indicate a legislative intent to limit the issuance of new liquor licenses in the areas specified to conform with the population factors specified in said law in order to protect the public health, morals and welfare.

8. Sections 46-5-24 and 46-5-25 N.M.S.A., 1953 Comp., are constitutional insofar as they apply to petitioners under the facts of this case.

9. The action of respondent in denying petitioner's application for a new dispenser's license in the Village of Williamsburg, New Mexico, was not unlawful, arbitrary or capricious.

10. The respondent's actions in denying petitioners' application for a new liquor license in Williamsburg should be affirmed.

All Requested Findings of Fact and Conclusions of Law of the parties, inconsistent with those found or which are not adopted by the Court above, are denied.

Let Judgment Be Entered Accordingly.

Original Signed by

Judge THOMAS A. DONNELLY
District Court Judge